

Present: Garvin J.

1927.

Application for Mandamus on the CHAIRMAN and SECRETARY
of the Urban District Council, Matale.

HUSSAIN *v.* ARIYANAYAGAM *et al.*

Urban District Council—Dissent sent by member—Right of Chairman to reject—Ordinance No. 11 of 1920, rule 16.

The Chairman of a Urban District Council has no right to reject the dissent sent by a member to be entered in the minutes of the proceedings of the Council in terms of rule 16.

A PPLICATION for a mandamus on the Chairman and the Secretary of the Urban District Council, Matale, requiring them to enter in the minutes of a meeting of the Council held on August 7, 1926, a written dissent sent by the petitioner, who was a member of the Council. It appears that at the meeting in question the Chairman asked the Council to pass a special vote for legal expenses, whereupon the petitioner and another member desired to debate the matter. The Chairman ruled that there should be no debate, and the vote was passed. After the meeting the petitioner sent in a written dissent.

H. V. Perera (with Abeywardena), in support.

E. W. Jayawardene, K.C. (with Garvin), contra.

June 15, 1927. GARVIN J.—

This is an application for a mandamus on C. Ariyanayagam, the Chairman, and B. C. Juriansz, the Secretary, of the Urban District Council of Matale, requiring them to enter in the minutes of a meeting held on August 7, 1926, a written dissent forwarded by the petitioner, who is a member of this Council.

The petition did not disclose sufficient grounds for a rule on the Chairman, and notice to show cause was ordered on the second respondent. On the returnable date Mr. E. W. Jayawardene, who intimated to me that he appeared on behalf of both respondents, read an affidavit by the second respondent and opposed the application for a writ.

The second respondent admits that the dissent was not entered, but pleads that this was in compliance with the order of the Chairman that this dissent was not to be entered in the minutes. It was sought, however, to justify the refusal to enter this dissent on the ground that the Chairman had the right to reject a dissent, and that in this instance he exercised a proper discretion.

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It would seem that at the meeting of the Council held on August 7 last the Chairman invited the Council to pass a special vote for legal expenses. The petitioner and one other member desired to debate the matter. The Chairman then ruled that there should be no debate, and give as his reason that the litigation which necessitated the vote was still pending, and, to use his own words, "Sub judice." With this order we are not concerned. No debate appears to have taken place, but after the meeting at which the vote was passed the petitioner sent in a written dissent. The Chairman claims to have the right to reject this dissent, and gives as his reason that the matters therein referred to were "sub judice."

Rule 16 of the rules is as follows:—

"It shall be competent for any Councillor who is in a minority to record the reasons of his dissent from the opinion of the majority, and such written dissent, if sent to the Secretary within one week of the Council meeting in question, shall be entered by the Secretary at the end of his minutes of the proceedings."

It is manifest that the rule lays the Secretary under a duty to enter every dissent forwarded by a member in terms of the rule at the end of the minutes of the meeting. So far as he is concerned the duty is absolute; he has no discretion in the matter.

Where the duty to enter a dissent is imposed in such clear and unambiguous terms, there is no need to speculate as to the purpose a dissent is intended to serve or to consider how far the supposed purpose or any purpose whatsoever is achieved by this particular dissent.

It is said, however, that the Chairman must be presumed to have the power to prohibit the entry of a dissent. No authority was cited for the proposition, nor was my attention drawn to any rule which expressly or impliedly conferred such a power on the Chairman.

Nor do I think it necessary to contemplate a case of gross abuse by a member of the privilege of entering a dissent. This is not such a case. If ever a member invokes the powers of this Court to aid him in placing a grossly improper dissent in the record of the minutes of a meeting, there can be no doubt that his application will be dealt with appropriately.

Towards the end of the argument Mr. Jayawardene informed me that he appeared only for the Secretary, and that his first statement that he represented the Chairman was a mistake. This is unfortunate, as otherwise, in view of the position disclosed in the Secretary's affidavit, a notice would have issued on the Chairman. There is, however, among the papers filed in connection with these proceedings a proxy signed by the Chairman authorizing a firm of proctors to represent him.

This suggests that Mr. Jayawardene's second statement may possibly be mistaken. But under the circumstances it is not possible to treat the Chairman as a respondent, even though his objections have been fully considered.

Order absolute will issue against the Secretary of the Urban District Council of Matale.

The costs will be paid by the second respondent, B. C. Juriensz.

Rule made absolute.

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